

**Town of Fishkill
Zoning Board of Appeals
March 21, 2006
Minutes**

Members Present

Barry Silverstein-Chairman
Ronald Critelli
Lynne Raver
Marc Breimer-Alternate

Members Absent

Maureen Kangas-Vice Chairman
MaryAnn Leenig
April Callahan-Alternate

Other Officials Present

Janis Gomez Anderson, Esq. – ZBA Attorney
Edward Peters – Building Inspector, Interim Zoning Administrator
Joel Petrus – Deputy Building Inspector
Christopher Colsey – Director of Municipal Development

Notice of Appeal Hearing has been published in the Poughkeepsie Journal, The Southern Dutchess News and The Beacon Free Press.

Notified of the variance requests were the Town Board, Town Planning Board, Dutchess County Department of Planning, The Interim Zoning Administrator and the surrounding property owners.

The meeting of the Zoning Board of Appeals was called to order at 7:03 pm by the Chairman. He made announcements regarding the no smoking policy and the emergency exits and fire procedures.

Chairman Silverstein announced that Alternate Member Marc Breimer was on the Board for this meeting with full voting rights.

Chairman Silverstein announced that Lori Joseph Builders is withdrawing their application, number ZB04-008 on Brookside Rd.

Chairman Silverstein called for comments or corrections to the minutes of the February 2006 meeting. Hearing none, he called for a motion to accept the minutes as written.

Marc Breimer made the motion to accept the minutes as written from the February 21, 2006 meeting.

Ronald Critelli seconded.

Motion Carried

Barry Silverstein – Aye

Ronald Critelli – Aye

Lynne Raver – Aye

Marc Breimer – Aye

Old Business

Continued Public Hearing for:

Grid Number: 5953-00-785450 Address: Melzingah Dam Rd

Application Number: ZB05-010, submitted by David Gianna and Denise Zottola, requesting the following variances. 1) front yard setback of 42.9ft where 75ft is required, 2) side yard setback of 37.9ft where 50ft is required, 3) minimum lot size of 1.52 acres where 4 acres is the minimum and 4) access to the property from other than the a main road.

Said requests are a violation of Chapters 150-33.A. and 150.26.A. of the Code of the Town of Fishkill.

The Chairman announced that the Applicant requested an Adjournment until the April 18, 2006 meeting to respond to the Town Engineer's report.

The Chairman called for a motion to Adjourn this Public Hearing

Lynne Raver made the motion to Adjourn the Public Hearing

Marc Breimer seconded

Motion Carried

Barry Silverstein – Aye

Ronald Critelli – Aye

Lynne Raver – Aye

Marc Breimer – Aye

Board Discussion

Grid Number: 6356-01-336595 Address: 115 Mountainview Rd

Application Number ZB05-020, submitted by Antonio Scanga, requesting a 31.7ft variance creating an 18.3ft rear yard setback where 50ft is the minimum allowed and a variance from Chapter 150.21 requirement that no more than 10% of a lot can be under water. Said requests are a violation of Chapters 150-33.A. and 150.21 of the Code of the Town of Fishkill.

Chairman Silverstein advised the Floor that it is unusual to have a discussion regarding a case at the beginning. They are usually reserved for the end of the meeting. The Board Members went on a site visit to the property last month after the Public Hearing was

closed. There was no discussion regarding it. It was saved for this meeting. He stated that although the Public Hearing was closed, there is still discussion by the Board as to their views concerning this. The Chairman called for comments from the Board Members.

Lynne Raver stated that she was surprised to see the condition of the grass still being bent down, left over from the flood. The severity of the water was a surprise. She stated that she was curious if the proposed height addition will hurt the neighbors. Will it save the Scanga's house? How will it affect the neighbors? She stated that she has a real problem or issue with that. Ms. Raver commented that Mr. Andrew's stated that in his finding, it can work, but it is a real concern for her.

Chairman Silverstein asked if Ms. Raver felt that it would be detrimental effect on the neighbors. Ms. Raver confirmed that she did.

Marc Breimer stated that his concern is more long term. There have been some significant changes in the nature of the Fishkill Creek watershed area. He believes that it is incumbent upon this community to prevent further disasters through mitigation and his concern is to sway off the long term affects towards future flooding events. The question he is weighting in his mind is when do we draw the line. Where do we begin to initiate new considerations towards flood mitigation? Mr. Breimer stated that at the point he sees the Engineer's report as agreeing that the steps being taken be the Scanga's are sound. He referenced that from an engineering standpoint, that the levees in New Orleans were good enough, given the existing engineering criteria. He reiterated that he could only base his decision on the existing scientific data regardless of what may or may not happen.

Chairman Silverstein asked Ronald Critelli his opinion. Mr. Critelli stated that he did visit the site and knows where he stands on it.

Chairman Silverstein stated that he also was at the site visit. He stated that besides the size of the variance being requested, that walking the property and seeing the amount of water that flows through there, he does have a problem with it. How can one say that this property, with a house on it, is not going to divert the flow of water to the neighbors. He believes that it is going to be a detriment to the surrounding property owners. The Chairman stated that when the floodwaters come they are flooded. With a house there, will it as an inch, ten inches, two feet? The Chairman stated that he did not know but that it would be cavalier of him to say that the neighbors are flooded, so what's a little more water. That is not an appropriate response for him to make. The amount of water on the site appeared to be very dramatic. The weather was quite cold and nasty, yet the ground was spongy and muddy. It was far different that what he anticipated when he walked through the site. The Chairman stated that he also has the same type of concerns.

The Chairman called for any additional comments from the Board. Hearing none, he closed the discussion regarding this application.

New Business

Appeal Number 1

Grid Number: 6256-02-595662

Address: 142 Riverview Dr

Application Number ZB06-003, submitted by Jonathan Michael, requesting an 11.1ft variance to construct and addition, creating an 8.11 ft side yard setback where 20ft is the minimum allowed in an R-20 Zoning District. Said request is a violation of Chapter 150-33.A. of the Code of the Town of Fishkill.

Chairman Silverstein read communications from the following:
DC Department of Planning cited this as a matter of local concern.

Town of Fishkill Planning Board offered an adverse recommendation based on the calculation that the addition will exceed the maximum allowed lot coverage. The addition would unnecessarily encroach upon the neighboring property and regardless of construction; storm water management will be an issue as the elevation of the property surrounding it is greater than the existing driveway.

Letter from Anthony and Dorothy Costa objecting to the project.

The Chairman advised that the ZBA secretary received a telephone message, which was then played for the Members from Anthony Musarra of Nantucket Dr. having no objection to the project.

Paul Varanouskas, architect, presented to the Board. He stated that the Applicant has an existing driveway, which has a non-conforming coverage at 28.39%. There is a retaining wall currently on the driveway which will be removed when the addition is constructed, which will increase the landscaping and decrease the lot coverage percentage.

He advised that the Applicants have a steep driveway, the hill in the back of the property continues to increase, causing water run off, and ice build up during the wintertime. This makes it a difficult and unsafe condition when accessing their cars in the winter. Their intent with the addition is to create garage space allowing them safe access to their vehicles. They do not currently have a garage.

Mr. Varanouskas commented that they will encroach on the side setback by almost twelve feet. The addition has been designed to minimize the impact to the neighboring yard. He stated that they are not placing any windows on the addition that would enable someone to peer into the neighbor's yard or anything along that nature.

He commented that the Applicants are seeking the variance to allow construction of the addition to deal with the weather conditions on the property.

Chairman Silverstein asked what the current lot coverage is and what it will be reduced to. Mr. Varanouskas stated that it is currently at 28.39% and with the addition, it will drop to 27.87%. Mr. Varanouskas stated that the maximum allowed is 20%. The Applicant's are currently non-conforming and are not taking away any additional landscaped areas. The addition is being built on the driveway and slightly reducing the impervious surface area.

Chairman Silverstein asked Janis Anderson if the application should be amended. Ms. Anderson stated that when the building permits and CO's were issued the lot coverage was never addressed. This is a problem. Ms. Anderson advised Mr. Varanouskas that the thought of the Board is whether the application should include the lot coverage. A variance is needed for it. This way if the variance is granted, the lot coverage issued is resolved.

Mr. Varanouskas advised the Board that the Applicant's do want to continue with the application, and if they need to add the lot coverage, they will do it. He presented the drawings and explained the back wall of the addition will replace the retaining wall. It will be a 24 ft x 24 ft addition with the two-car garage on the first level and they will create a master bedroom over it. He showed the front and side elevation drawing and explained that there will be two windows at the garage level, and one in the attic. There will be no windows on the side in the bedroom.

Lynne Raver asked for verification that it was a two-car garage. Mr. Varanouskas confirmed that it was. Ms. Raver asked if there had originally been a garage. Mr. Varanouskas stated that they did not. Marc Breimer stated that most of the homes in Dutchess Park were built with two-car garages underneath the house. Mr. Varanouskas agreed that it probably was.

Janis Anderson asked what else could be done to address the water conditions on the property. Mr. Varanouskas stated that they currently have a drainage pipe that runs along the side of the property, which helps relieve some of the pressure from the hill. The water then flows down the driveway.

Chairman Silverstein asked if they build the garage, does the Applicant have any plans to divert the water. Mr. Varanouskas stated that they may design a swale to keep the water from the main part of the driveway.

Lynne Raver asked if they would have gutters on the garage. Mr. Varanouskas stated that they would.

Ron Critelli asked what they need the additional space for. Mr. Varanouskas stated that it was mainly for the garage. They are adding the bedroom on top mainly because they are doing the garage.

Janis Anderson asked if a one-car garage was built, would they still need a variance. Mr. Varanouskas advised that a variance would not be needed. The cost difference for a one-

car versus a two-car garage is not that much different. Ms. Anderson commented that they would still have the driveway on the other side. Mr. Varanouskas advised that they will still have a portion of the driveway on the side yard. He pointed it out on the site plan. Janis Anderson asked if that portion could be removed and landscaped. Marc Breimer asked what effect it would have. Mr. Varanouskas stated that it could be removed. Ms. Anderson commented that it may reduce the lot coverage.

Jonathan Michel stated that there is a sloping retaining wall on that end and it would be a natural looping over the driveway and can be angled. He stated that the problem lies with the extreme angle of the property. There is enough room at the rear of the garage, but by the time you get to the front of the garage, they begin to run out of space. Going back into their property will have a negative impact on the neighbors.

Marc Breimer asked if the Applicant was going to keep the privacy hedges. Mr. Michel confirmed that they were. He advised that this is a fence and a tree lined area.

Janis Anderson asked which neighbors objected and which were ok. Mr. Michel stated that no neighbor near his property objected. He stated that the neighbor directly behind him was Anthony (Musarra) and he was in favor. His other neighbor, Ken, who was present at the meeting for a while, but must have left, also had no objection. He advised that he did discuss it with his neighbors and they all approved. Ronald Critelli stated that Anthony Costa was the one who objected. Mr. Michel advised the Board that he did not know him or where he lives. Chairman Silverstein stated that the Costa's live at 15 Trenton.

Chairman Silverstein asked how long he owned the house. Mr. Michel replied just over eight years.

Janis Anderson asked if the construction of the house and driveways is as it was when they bought it or did they modify it. Mr. Michel stated it is as it was. They have done a few internal things.

Mr. Michel stated that his wife is a teacher and leaves for work at 5:30am-6:00am. It is still dark outside and he spends a good portion of the winter chipping the ice that continuously forms from the run off from the hill. Having the garage would make a significant difference.

The Chairman called for comments or questions from the Floor. Hearing none, he called for additional questions or comments from the Board.

Marc Breimer stated that this type of construction was common throughout the Dutchess Park area. The Chairman agreed. Mr. Breimer continued stating that it would fit in with the property and the neighbors do not have complaints. Ron Critelli agreed. He stated that his concern is always for the immediate neighbor, and he is ok.

Chairman Silverstein asked Janis Anderson if they could close the Public Hearing even though the application may be modified. Ms. Anderson stated that it may be closed and the Applicant could submit a letter stating the design would be changed, and what the coverage would be. She advised that Nancy Lecker would get the new information to the ZBA Members. Mr. Varanouskas verified that a letter will be sent indicating the lot coverage. He stated that he would provide a new site plan. Ms. Anderson reminded him to include the lot coverage variance, as it will probably still be over the 20%. He advised that he would indicate that on the letter.

The Chairman called for a motion to Close this Public Hearing

Marc Breimer made the motion to Close the Public Hearing

Lynne Raver seconded

Motion Carried

Barry Silverstein – Aye

Ronald Critelli – Aye

Lynne Raver – Aye

Marc Breimer – Aye

Appeal Number 2

Grid Number: 6155-00-843658 Address: West Merritt Blvd

Application Number ZB06-004, submitted by Toll Brothers, requesting a 28ft height and 1½ story variance to construct 8 4-story buildings, creating a 63ft height and 4 stories where 35ft and 2½ stories are the maximum allowed. Said request is a violation of Chapter 150-33.A. of the Code of the Town of Fishkill.

Chairman Silverstein read communications from the following:

DC Department of Planning citing this as a matter of local concern.

Town of Fishkill Planning Board offering a positive recommendation. The Board advised that the original zoning for this parcel was PSC (Planned Shopping Center). It was re-zoned to PB (Planned Business) with a senior housing overlay. The PB Zoning District does not allow for 4-story buildings. The Town Board and Planning Board viewed several options and the eight 4-story buildings provided the best internal floor layout and an approved site design. The 4-story height is not inconsistent with the original PSC Zoning District, which permits building up to 70 ft in height.

The Environmental Advisory Board reviewed the application and found no environmental issues needing to be addressed.

Chairman Silverstein called for the representatives.

Richard Rang and Peter Galotti, Toll Brothers, presented to the Board. Mr. Rang stated that the Town Planning Board's letter gave the basic overview for him. The project has

been under review by both the Town Board and the Planning Board. The Town Board granted the rezoning from PSC to PB with the senior overlay. He stated that when the Town adopted its senior citizen ordinance, Toll Brothers wanted to do a senior project in the community. They read the criteria and goals that the Town was trying to meet. No property within the zones that you can apply the overlay, met the criteria as well as this parcel. He stated that the property is located behind the Kentucky Fried Chicken and Sam's Club. He presented the current proposal and the original rendering showing ten 3-story building and advised the Board that the Planning Board has the authority to vary the height of a building from 2 ½ to 3 stories in the Rombout Ladder District. Originally, Ten buildings basically 271 bedrooms throughout the entire community based on the overall size of the parcel. This is a conforming layout, but in considering the application, Toll Brothers felt that the eight 4-story building provided a better layout. It kept approximately the same number of units and bedrooms. This layout provided more open space and better circulation throughout the community. The buildings can be spaced farther apart and can be focused more on the center green. Everyone agreed that it was a better layout and this was the basis for the variance. Mr. Rang presented the original rendering of the 3-story building that had been prepared and the current proposal for the 4-story building. He presented photographs of the existing 4-story buildings in the Westage Business Center. Mr. Rang stated that their 4-story buildings will be consistent with the other buildings in the area. He advised that he didn't have any more to present and welcomed any questions the Board may have.

Chairman Silverstein called for questions from the Floor. Hearing none, he called for questions from the Board. The Chairman advised that the Board received the application a month in advance, so they were able to spend a considerable amount of time on it.

Lynne Raver asked, since it was a senior citizen housing, is there anything special being done with the elevators. Mr. Rang advised that in accordance with the senior citizen housing zone, all of the units must be accessible and be handicapped adaptable. There will be an elevator in the buildings. All of the units will be handicapped adaptable and 20% will be handicapped accessible. The community will be earmarked for 55 and older. Twenty of the units will be listed as affordable housing, meeting the affording housing threshold and they have committed a \$560,000.00 contribution to the Affordable Housing Trust Fund.

Mr. Rang stated that all of the units will be one or two-bedrooms and will range from 1,400 sq ft to 1,800 sq ft. There will be indoor parking. There will be twenty-two garage spaces and twenty-three units in each building.

Lynne Raver asked if each unit will have their own garage space. Mr. Rang reiterated that there will be twenty-two garage spaces and twenty-three units, that will leave one unit in each building without a garage space.

Janis Anderson asked if the Planning Board was addressing the need to be included in the Rombout Ladder District. Marc Breimer stated that he thought that they were. Mr. Rang confirmed that they were.

Mr. Rang advised the Board that the Town, on behalf of the Blodgett Water and Sewer District is negotiating with the Village of Fishkill for additional capacity because a residential component as opposed to a commercial district will use more water.

Ron Critelli asked for verification that the height of the building will be 59 ft. Mr. Rang confirmed that it would be. He pointed to the rendering and stated that is the height of the peak.

Marc Breimer asked Mr. Rang to remove the building renderings from the overview. He commented that the 4-story building option is a more attractive site plan with more open space. He questioned the original site plan and the additional structure on the right side of the plan. Mr. Rang stated that the original owner of the property wanted to retain a portion for commercial development. The Planning Board requested Toll Brothers address that in their SEQR process. The impact with this being retained in the PSC Zone and being fully developed. He commented that this is not part of their application, but the Planning Board wanted to conceptually see what Toll Brothers were going to do. It is shown on the overview, but not colored in since it is not part of their site plan.

Lynne Raver asked what the small square building was. Mr. Rang advised that is the community center.

Marc Breimer commented that there is a significant amount of water in the area. Mr. Rang stated that the Fishkill Creek and Clove Creek are there. He indicated the ponds on the overview and explained that the ponds were created as part of the storm water management system for the WDG and Westage sites.

Marc Breimer stated that he does have a concern since he remembers the area being under water when he was younger. He understands that the mitigation work had been done and there hasn't been any flooding. Mr. Rang stated that in the original finding by WDG concept plan, all of the construction had to be brought above the 100-year flood plain. They brought in approximately eight feet of fill. All of the first floors had to be two feet above the 100-year flood plain elevation. Some of the material was brought in prior to Toll Brothers becoming involved. Mr. Rang advised the Board that all of the downstream impacts associated with it, was addressed in the SEQR review.

Mr. Rang stated that the Army Corps Wetlands, that have been delineated in the area, are shown on the on the overview in the dark shade of green.

Chairman Silverstein asked if the units were going to be rentals or owned. Mr. Rang stated that they will be condominium ownership. Mr. Rang stated that they did bring the floor plans of the building if the Board wanted to view them. He stated that they felt the floor plans were improved. The original plan had four units on the first floor, but now to accommodate the parking, they only have two units on the first floor.

Janis Anderson asked what handicapped adaptable meant. Mr. Rang explained that the unit can be converted to handicapped accessible. The doors are wider, it is laid out to accommodate a wheelchair being turned around in the bathroom. Chairman Silverstein stated that the bathroom walls are designed to add rails if needed. Mr. Rang stated that the code requires that 20% of the units be accessible and 20% be adaptable. Toll Brothers decided to make all units adaptable.

Hearing no additional comments, Chairman Silverstein called for a motion to Close or Adjourn this Public Hearing

Ronald Critelli made the motion to Close the Public Hearing

Marc Breimer seconded

Motion Carried

Barry Silverstein – Aye

Ronald Critelli – Aye

Lynne Raver – Aye

Marc Breimer – Aye

Deliberations

05-010, Gianna, Melzingah Dam Rd

No deliberations

05-020, Scanga, Mountainview Rd

No deliberations

06-003, Michel, Riverview Rd

Chairman Silverstein called upon Ronald Critelli to comment. Mr. Critelli declined. He called upon Lynne Raver. Ms. Raver stated that they answered her questions and she sees the need. Marc Breimer stated that his original concern was the drastic encroachment on the setback, but Dutchess Park has always been a tight neighborhood. He believes that there may many non-conforming lots in the area. He stated that he would be concerned except that he has seen several other modifications, such as the addition of garages, in this area. He is impressed that they are reducing the amount of impervious surface on their lot. He feels that this variance is reasonable. Chairman Silverstein agreed that this lot is no different from most of the lots in the area. The garage will fit in and the fact that they are cutting back by landscaping and reducing the blacktop area is favorable to him. The Chairman called for additional comments. None voiced.

06-004 Toll Brothers

Lynne Raver stated that the site plan looks good and was well thought out. Chairman Silverstein stated that it was necessary for the community. Marc Breimer commented that there will be a significant benefit to the community having it there. His only concern reverts to the construction in the floodplain area. He stated that all of the engineering work has been done and he needs to base his decision on the state of the technology at the moment. The measures taken to prevent the flooding of the creek area are acceptable. The Chairman stated that he did see Maureen (Kangas) recently and she was favorable towards this project. He feels that no Member of the Board has any negative feelings towards this project.

Chairman Silverstein called for any additional comments regarding any of the above appeals. Hearing none, he called for a motion to Adjourn the ZBA Meeting.

Ronald Critelli made the motion to Adjourn the ZBA Meeting
Lynne Raver seconded
Motion Carried

Meeting Adjourned at 7:49 pm

Respectfully submitted
Nancy Fitzgerald-Lecker
ZBA Clerk